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**From:** Kevin Murphy [KMurphy@WladisLawFirm.com]  
**Sent:** 9/16/2015 5:34:38 PM  
**To:** Charney, Lauren [Charney.Lauren@epa.gov]  
**CC:** Doyle, James [Doyle.James@epa.gov]; David W. Nunn [dwnunn@eastmansmith.com]  
**Subject:** RE: changes to paragraph 66

Lauren:

In reply to your e-mail of yesterday, set out below is a revised draft paragraph 66. It reworks but incorporates many of the concepts from your draft, but not everything. David and I are providing the following in an effort to keep marching towards the goal line, but this is not formally the group's response.

David Nunn probably does not have any availability this afternoon, but if he does, it will not be until after 3:00, if at all.

I am available the remainder of the afternoon. I think between this exchange of drafts we have a sharper focus on the issues that remain with this paragraph/concept. If you or you and Jim Doyle want to discuss the two drafts we probably can make additional progress to either further fine tune the issues or potentially reduce or eliminate them, either of which will help us with our group call tomorrow. Please let me know if you would like to discuss paragraph 66 this afternoon.

Respondents shall be responsible for funding all of their obligations under this AOC, including performance of the Work and reimbursement of Future Response Costs. Upon entry of a judicially-approved consent decree that embodies an obligation by one or more of the Respondents to this order to implement the Remedial Action for the Lower Ley Creek OU (the RA Respondents), the RA Respondents shall, pursuant to the terms of the judicially approved settlement, receive advanced funding from the Special Account in an amount equal to the RD costs incurred by the Respondents to this order in performing the RD Work. The judicially approved settlement shall require that the Advanced Funding reimbursement be used for the sole purpose of implementing the RA work. The judicially approved settlement also shall require that any such request for reimbursement shall be accompanied by (a) a description of the work performed under this AOC, which EPA agrees shall be satisfied by the submission of a full set of the submissions required by the AOC and related Statement of Work; (b) a detailed, itemized accounting of their costs incurred in performing the Work and (c) evidence of the Work's consistency with the NCP, which EPA agrees can be demonstrated by EPA's written approval of the Work. The amount of reimbursement will be dependent on (a) the availability of funds in the Special Account after accounting for any EPA past costs not yet reimbursed from the Special Account, and (b) EPA's acceptance of the cost documentation subject, if necessary, to dispute resolution.

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**From:** Charney, Lauren [mailto:Charney.Lauren@epa.gov]

**Sent:** Tuesday, September 15, 2015 1:15 PM

**To:** David W. Nunn; Kevin Murphy

**Cc:** Doyle, James

**Subject:** changes to paragraph 66

David and Kevin,

Below is the revised language we propose for paragraph 66 of the AOC. Talk to you at 2:30.

1. Respondents shall be responsible for funding all of their obligations under this AOC, including performance of the Work and reimbursement of Future Response Costs. Upon entry of a judicially-approved consent decree that embodies an obligation by one or more of Respondents to implement the Remedial Action for the Lower Ley Creek OU, those Respondents that are settlors in any such consent decree may submit a joint request, as appropriate, for reimbursement of the RD costs incurred in performance of the Work under this AOC for those Respondents' portion of the RD costs. The reimbursed funds shall be used for advanced funding from the Special Account of the Remedial Action, pursuant to the terms of any such judicially-approved settlement. Any such request for reimbursement shall be accompanied by a description of the work the requesting Respondents performed related to the RD for which reimbursement is sought and a detailed, itemized accounting of their costs incurred in performing the Work under this AOC. The basis for and the amount of reimbursement to the Respondents will be dependent on (a) the availability of funds in the Special Account, (b) the Work's consistency with the NCP, which EPA agrees can be demonstrated by EPA's written approval of the Work, (c) EPA's acceptance of the cost documentation described in the cost accounting documentation, subject to dispute resolution, (d) EPA's reimbursement of its past response costs incurred at the Lower Ley Creek OU from the Special Account, and (e) the pre-condition of the participation of one or more of the Respondents to this AOC in any such future, judicially-approved settlement to implement the Remedial Action selected for the Lower Ley Creek OU.

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